IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE DR JUSTICE G.YETHIRAJULU

TAKEN UP WRIT PETITION NO : 1940 of 2005

Between:

Member Secretary, A.P. State Legal Services Authority,
High Court Buildings, Hyderabad.

..... PETITIONER

AND

1 The Director General and Inspector General of Prisons and

Correction as Services, Government of A.P. Chanchalguda,

Hyderabad.
2 The Director General of Police, Govt. of A.P., Hyderabad.
3 The Secretary to the Government of A.P. Home (Prisons)

Department, Secretariat, Hyderabad.

4 The Secretary to the Govt. of A.P. Home (Courts)

Department, Secretariat, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the letter filed herein the High Court may be pleased to issue an Order, direction, or a Writ, more particularly one in the nature of Writ of Mandamus to call for records and remarks from the Respondents herein relating to (i) non release of 342 under trial prisoners for want of sureties due to their poverty though they are granted bail, (ii) non following the salutary principles laid down by the Hon'ble Supreme Court of India, in the binding precedents in (a) Hussainara Khatoon and others Vs. The State of Bihar (1980, SCC 91) (b) Motiram Vs. State of M.P. (1979 1 SCR 335) and (c) Upadhay Vs. The State of A.P. wherein the Hon'ble Courts noted that there will be cases where the under trial prisoners may not be in a position to furnish sureties, the trial courts may consider keeping in mind the fact of each case especially the period spent in jail, releasing them on bail by furnishing personal bonds, and to pass appropriate orders directing the concerned authorities to take steps to follow the principles laid down by the Hon'ble Supreme Court in releasing the under trial prisoner to whom bail is granted by various courts in Andhra Pradesh, but unable to get sureties for release, due to poverty and to pass such other or further Orders as this Honourable Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner:PETITION

Counsel Assisted the Court: Sri C.Padmanabha Reddy, Senior Advocate (Amicus Curiae)

Counsel for the Respondent No.: GP FOR HOME for Advocate General.

The Court made the following :

O R D E R (Per BN,J)

This writ petition has been taken up on the report of the Secretary, State Legal Services Authority.

2. It is stated that 342 under trial prisoners are in various jails of the State, who have been granted bail by the courts, but have not been released, as they could not produce sureties.

3. On the last occasion, when the case came up for hearing, we requested Senior Counsel Sri C.Padmanabha Reddy to assist this court in the matter. We have heard him and we have also heard Government Pleader for Advocate General.

4. Out of the total cases of 342, 49 cases are under Section 302 I.P.C.; 59 cases are under Section 397 I.P.C.; 33 cases are under Section 380 I.P.C.; 14 cases are under Section 307 I.P.C; 11 cases are under N.D.P.S. Act; 12 cases are under Sections 394 and 395 of I.P.C.; and 17 cases are under A. P. Prohibition Act.

5. Three of the under trial prisoners who are detained, are facing charges under Section 337 I.P.C. Prisoner No.1350. Akhil Mantal, s/o Harinath and Prisoner No.135. S.Mantal, s/o Sukrth Mantal, are in custody from 1.4.2004 in Central Prison, Warangal. Prisoner No.7738. Kala Pedda Nageswar Rao s/o Chinna Subba Rao is in custody from 26.5.2004 in Cherlapalli Central Prison. Even if they are convicted under Section 337 I.P.C., a maximum sentence of six months imprisonment can be awarded. But they have been already in custody for more than six months.

6. Similarly Prisoner No.9692 Y.Guravaiah who has been in Nalgonda District Jail since 30.9.2004, is facing charge under Section

337 of I.P.C., which carries a maximum sentence of six months. He had already been in jail for almost five months.

7. Therefore, it is not fair to keep them in custody even if they fail to produce sureties. The concerned Magistrates are directed to release them on bail on their furnishing personal bonds for a sum of Rs.500/- (Rupees five hundred only).

8. Regarding seventeen cases registered under A. P. Prohibition Act, it is directed that the learned Magistrates shall see the possibility of compounding them, as we are told that the offences are compoundable, within a week from the date of receipt of a copy of this order. If they are not compounded, then the accused shall be released on bail, on their furnishing personal bonds for a sum of Rs.5,000/- (Rupees five thousand only).

9. Other cases in which the accused are in custody in spite of having been granted bail, are serious in nature. Therefore, we cannot allow them to be released at this stage on personal bonds. But in all those cases, the learned Magistrates/Sessions Judges who are seized of the matter, shall take up these matters on day-to-day basis and decide them as expeditiously as possible.

10. The concerned jail authorities are also directed that the accused in all these cases shall be produced before the concerned courts as and when required, without fail.

11. With the above directions, the writ petition is disposed of.

12. Necessary directions in the light of this judgment, shall be passed on by the Registrar (Judicial) to the concerned courts and jail authorities.

BILAL NAZKI,J

G.YETHIRAJULU,J

AVS

DATE:16.2.2005

To

1 The Director General and Inspector General of Prisons and

Correction as Services, Government of A.P. Chanchalguda,

Hyderabad.
2 The Director General of Police, Govt. of A.P., Hyderabad.
3 The Secretary to the Government of A.P. Home (Prisons)

Department, Secretariat, Hyderabad.

4. The Secretary to the Govt. of A.P. Home (Courts) Department, Secretariat, Hyderabad.

5. 2 CCs to the Advocate General, High Court of A.P. Hyderabad (OUT).

6. The Member Secretary, A.P.State Legal Services Authority, High Court Buildings, Hyderabad.

7. TheOfficer Concerned, PIL Cell, High Court of A.P., Hyderabad.

8. The Registrar (Judicial), High Court of A.P., Hyderabad.(For kind information and necessary action)

9. Two C.Cs. to G.P. for Home, A.P.High Court Buildings,

Hyderabad (OUT).

10. Two C.D. copies.

11. The District Judge, Warangal.) With a request to

12. The District Judge, Nalgonda) communicate the same

to all the concerned.